



This Recommended Order and Decision became the Order and Decision of the
Illinois Human Rights Commission on 11/07/02.

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF:

MAHIMUD GELGELU,

Complainant,

and

ACCESS SECURITY

Respondent.

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)Charge No: 2001 CF 0618

)EEOC No: N/A

)ALS No:11631

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RECOMMENDED ORDER AND DECISION

This matter is before me on Respondent's motion to dismiss. Respondent appeared through counsel; Complainant appeared ProSe. Complainant has failed to file a response, although given time in which to do so. This matter is ready for decision.

FINDINGS OF FACT

1. Complainant filed a Charge with the Illinois Department of Human Rights (Department) on September 13, 2000.
2. On October 12, 2001, Complainant, on his own behalf, filed a Complaint with the Illinois Human Rights Commission (Commission) alleging to have been aggrieved by practices of handicap, religious, and retaliatory discrimination in violation of the Illinois Human Rights Act (Act), 775 ILCS 5/1-101 et. seq.
3. On the initial status date, November 28, 2001, Respondent made an oral motion to dismiss, which was entered and continued pending a written motion to dismiss to be filed by February 8, 2002.
4. The November 28, 2001 order gave Complainant until February 22, 2002 to file a response to Respondent's motion to dismiss and set a status date for March 12, 2002.
5. On February 7, 2002, Respondent filed a written motion to dismiss.
6. Complainant did not file a response.
7. On March 12, 2002, both Parties appeared on the motion
8. During the hearing, Complainant filed a document purporting to be an extension notification for Charge # 2001 CF 0618 (the same Charge # of the instant Complaint) issued by the Department.

CONCLUSION OF LAW

The Commission lacks jurisdiction over this Complaint because it was not filed in accordance with sections 5/7A-102(G)(1) and 5/7A-102(G)(2) of the Act.

DISCUSSION

Respondent's written motion contends that the Complaint should be dismissed because there is a pending complaint with the Equal Employment Opportunity Commission (EEOC), which was filed on August 20, 2000. However, during oral argument, it was brought to my attention that the appropriate basis for dismissal is that the Parties have agreed to an extension of time for the Department to complete its investigation of the underlying Charge; therefore, the Commission lacks jurisdiction over the instant Complaint.

Complainant submits a copy of a purported Department document, signed by the Complainant and a representative of the Respondent, that indicates agreement by the Parties of a 60-day extension in addition to a 180-day extension for the Department to complete its investigation. Respondent orally represented that he was familiar with the person whose name was indicated as the Respondent's representative on the document.

By my calculation,¹ since the Charge was filed September 13, 2000, the initial 365-day period would end September 13, 2001; the 180-day extension would extend the investigatory period to approximately March 13, 2002; and the additional 60-day extension would extend the investigatory period to approximately May 13, 2002. As the Complaint was filed October 12, 2001, it was filed prematurely and is not subject to jurisdiction by the Commission.

Section 5/7A-102(G)(1), in relevant part, states:

When a charge of a civil rights violation has been properly filed, the department, within 365 days thereof or within any extension of that period agreed to in writing by all parties, shall either issue and file a complaint in the manner and form set forth in this Section or shall order that no complaint be issued and dismiss the charge with prejudice without any further right to proceed except in cases in which the order was procured by fraud or duress...

Section 5/7A102 (G)(2), in relevant part, states:

Between 365 and 395 days after the charge is filed, or such longer period agreed to in writing by all parties, the aggrieved party may file a complaint with the Commission, if the Director has not sooner issued a report and determination pursuant to paragraphs (D)(1) and (D)(2) of this Section... The aggrieved party shall notify the Department that a complaint has been filed and shall serve a copy of the complaint on the Department on the same date that the complaint is filed with the Commission.

Complainant filed the instant Complaint with the Commission on October 12, 2001, during the pendency of the Department's extended investigation period; therefore, there is no basis for jurisdiction before the Commission.

¹ This calculation is approximate and is being used for purposes of this order only and should not be relied upon at proceedings before the Department or in any other forum.

RECOMMENDATION

I recommend that this Complaint be dismissed with prejudice.

HUMAN RIGHTS COMMISSION

By: _____
SABRINA M. PATCH
Administrative Law Judge
Administrative Law Section

ENTERED: October 2, 2002